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10/530,351	04/06/2005	Bart Gerard Boucherie	BOUC3022/JC/PMB	7774
23364 7590 06/30/2009 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER HUSON, MONICA ANNE				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: BART GERARD BOUCHERIE

Application No. 10/530,351
Technology Center 1700

Mailed: June 30, 2009

Before Deborah L. Perry, *Supervisory Paralegal Specialist, Review Team.*
Perry, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 23, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

BACKGROUND

Final Rejection

In the Final Rejection mailed February 15, 2008, the Examiner rejects:

- Claims 1 and 3-5 are rejected under 35 USC 102(b) as being anticipated by Chiba (WO 01/70311 (Chiba)) using the related document, translation JP 2001-259031.
- Claim 16 is rejected under 25 USC 102(b) as being anticipated by Jentzen (US 5,782,803).
- Claims 6-7 are rejected under 35 USC 103(a) as being patentable over Chiba in view of Sorensen (5,030,406).
- Claims 8 is rejected under 35 USC 103(a) as being unpatentable over Chiba.
- Claims 9-13 are rejected under 35 USC 103(a) as being unpatentable over Chiba in view of Schwartz (3,659,749).
- Claims 14-15 are rejected under 35 USC 103(a) as being unpatentable over Chiba in view of Reynolds (4,861,335).

EXAMINER'S ANSWER

An Examiner's Answer was mailed September 26, 2008. A review of the Examiner's Answer reveals the following appendix headings are defective.

Evidence Relied Upon

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S
ANSWER...the following items:

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The appendix heading Evidence Relied Upon is deficient, because it fails to include all of the references used in the rejection of the claims.

Specifically, it does not cite the following references:

Sorensen (U.S. Patent 5,030,406);
Schwartz (U.S. Patent 3,659,749); and
Reynolds (U.S. Patent 4,861,335)

Correction is required.

Grounds of Rejection

The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, specifically the Final Rejection mailed September 26, 2008. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details. A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed September 26, 2008, under the heading "Grounds of rejection to be Reviewed on Appeal" is either unclear or is not consistent with the grounds of rejection.

A review of the Examiner's Answer finds that it is unclear what rejected claims are on appeal as compared to the Appeal Brief and/or the Examiner's Answer does not clearly address differences between rejections set forth in the Examiner's Answer and those addressed in the Appeal Brief.

Specifically, the Examiner does not restate all of the grounds of rejection from the Final Rejection.

Clarification of the record for the status of each pending claim is required

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to "vacate" the Examiner's Answer mailed September 26, 2008;
- 2) to provide a Substitute Examiner's Answer correcting the appendix headings:

- 2a) Evidence Relied Upon: citing all references used to reject the claims on appeal;
- 2b) update appendix section (6) Grounds of Rejection, stating whether the Examiner agrees or disagrees with the Appellant's statement of the grounds of rejection on appeal;
- 2c) correcting appendix section (9) Grounds of Rejection, fully restating all grounds of rejection on appeal;
- 2d) to include the approval from the TC Director or designee, if appropriate, in accordance with MPEP 1207.05, part (B) as

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may be required for any new grounds of rejection; and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/dlp/llw

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